

REMARKS

Claims 1 – 6 were submitted for examination. In the Office Action, the Examiner rejected Claims 1 – 6, for reasons given.

By this Reply paper: Claims 1 – 6 are amended. No claims are cancelled. Dependent Claim 7 is newly added. Accordingly, upon entry of this Reply, Claims 1 - 7 are pending.

In this paper, each of the Examiner's contentions are satisfied, traversed, and/or obviated. Entry and reconsideration of this Application is requested.

The Office Action

In the Examiner's Action, the Examiner raised certain issues, including a need to conform the application to a format set out in the MPEP, the need for a certified priority of the application as originally filed in Mexico, and raised objections and/or rejections to the Specification, Abstract and/or claims.

A response to each Paragraph of the "Detailed Action" will follow and be presented in the order presented in the "Detailed Action".

Priority

Paragraph 1:

The Examiner acknowledges Applicant's claim for foreign priority and notes that a certified copy of the prior filed application, required under 35 USC 119(b), has not been filed.

A certified copy of the prior filed Mexican Patent Application PA/U/2003/000166, filed on July 11, 2003 in the Mexico, upon which priority is claimed, will be submitted in due course.

As discussed on Page 2 of this Reply paper, in the “Amendments to the Specification”, note is made that the Application is revised to include a caption (“Cross-Reference to Related Applications”) and a paragraph [000.1] to incorporate this priority claim.

Drawings

Paragraph 2:

The Examiner objected to the drawings under 37 CFR 1.83(a), contending that the drawings do not show every feature of the invention specified in the claims. The Examiner contends that in the claims, the “lid” (claim 5) and the “diagonal slot” (Claim 6) must be shown or the features cancelled.

This application incorporates by reference that which was originally filed, which includes the drawings, specification, and claims. One or more of the drawings, specification, and claims may be revised, such as by revising a drawing to be consistent with the words and vice versa, as long as no new matter is not added.

The Specification is revised herein (e.g., [0030.3]) to clarify that the box for dispensing bags from rolls incorporates an openable and closable upper lid . Support for this is found in the claims as originally filed. The Application as originally filed included FIGS. 1, 2 and 4, each illustrating an upwardly open box having an interior compartment for storing rolls of plastic bags, joined end to end. The drawings are not revised to show a lid because the reader would understand how to practice the invention, as originally described.

Accordingly, although amended, Claim 5 is not amended to remove the requirement of “openable and closable upper lid” because support therefor is found in the original Specification.

Applicant’s Attorney submits that the Examiner’s objection is obviated and should be withdrawn.

To advance prosecution, Claim 6 is revised to clarify “the diagonal slot”. The upper end of the vertical tubular support of the support stand is at an angle to the support member (i.e., the end is truncated and forms an angled end face), and this truncated end face is connected to the base of the dispenser box, resulting in the dispenser box being at an angle to the vertical support..

FIGS. 1 and 3 essentially teach the arrangement.

Accordingly, the Examiner’s drawing objections are believed obviated.

Specification

Paragraph 3:

The Examiner objected to the Abstract as containing legal phraseology (e.g., “characterized” and “said”) and the Specification as not being arranged in the layout preferred by the Patent Office. The Examiner directed attention to 37 CFR 1.77(b) and the preferred arrangement of the Specification.

As discussed on Page 2 of this Reply paper, in the “Amendments to the Specification”, note is made that (1) an annotated Specification, showing deletions (by strikeout) and additions (by underlining) to the specification as originally filed, and (2) a “Substitute Specification” (a clean replacement showing the Application with the requested changes), are submitted herewith. Additionally, the “Abstract” is revised and “annotated” and “clean” copies of the Abstract are appended to each respective Specification.

Submitting a Substitute Specification is believed to be the most efficient manner to obviate format issues (e.g., adding paragraph numbers in brackets and correcting section headings); add a section heading and paragraph regarding priority, correct sentence fragments, revise and clarify certain phases, sentences, and paragraphs having obtuse language, remove legalese (e.g., “said” in certain sentences), remove indefiniteness (e.g., adding identifier numbers

and/or correcting numbers), and/or obviate other issues resulting from the translation from Mexican to English.

As noted above on Page 2 of this Paper, the U. S. Patent Publication of the Specification (and paragraph brackets) is the reference document used to generate a revised Specification.

No new matter is included.

By this action, the Examiner's objection is believed obviated.

Claim Objections

Paragraph 4:

Claims 1 – 6 are objected to for reasons given.

Claim 1 is objected to because the Examiner contends that a transitional phrase ("...characterized because it consists of ..") is confusing.

Claim 1 is amended herein in a manner to be more definite.

By this amendment, the Examiner's objection is submitted as obviated.

Claims 2 – 6 depend on Claim 1 and are submitted as being definite for the same reason that Claim 1 is now definite.

Claim Rejections – 35 USC § 112, First Paragraph

Paragraph 6:

Claims 1 – 6 are rejected under 35 USC Section 112, first paragraph, as failing to comply with the enablement requirement. The Examiner draws attention to the specification and drawings and questions how the front wall includes a slot, how the slot incorporates an opposite facing slope, and notes that the drawings show a slot formed below – not on – the front wall.

First, the specification is revised (e.g., [00030.1]) to describe the dispenser box (1) as comprising a front and a rear, four walls disposed vertically including two lateral sidewalls (3

and 4), a back wall (5), a front wall (6), a base wall (14), and a discharge opening or slot (8) across the bottom front of the dispenser, the discharge opening defined by a separation between the lower edge of the front wall (6) and the front edge (10) of the base wall (14), thereby forming an opening across the bottom edge of the box and laterally between the sidewalls (3 and 4).

Claim 1 is amended, inter alia, to define the discharge opening that extends across the front of the dispenser box, and to clarify the use of the term “slot”.

Accordingly, the Examiner’s rejection is believed obviated.

Claim Rejections – 35 USC § 112, Second Paragraph

Paragraph 8:

Claims 1 - 6 are rejected under 35 USC Section 112, second paragraph, as being indefinite for reasons given.

In view of the actions taken in this Reply, Applicant’s Attorney traverses the rejection.

As to Claim 1, the Examiner contends that certain terms have no positive antecedent basis; the claim is improper as being separated by a period into two parts; and that a term “its” is confusing as to what terms is being referred to.

Claim 1 is extensively amended herein, to clarify the terms referred to by the Examiner, “join” the separated claim portions into one, and clarify the invention over prior art.

Claim 1 is amended, inter alia, to require that the dispenser include a plurality of walls, including a front wall and a base, and that the front wall and base have repetitive end portions that are juxtaposed in spaced apart relation to form a discharge opening that extends across the bottom edge of the box.. Claim 1 is also revised to clarify the nature of the roll of adjoining plastic bags, associated tear lines and slots, and the outer bag. The relationship of the hook to the box, ramp and discharge opening (slot) is clarified. The phrase including “its” is revised.

As amended, Claim 1 is submitted as obviating the Examiner's rejection under 35 USC Section 112, second paragraph.

In Claim 2, the Examiner contends that the phrase "the central part" lacks antecedent basis and another noted phrase relating to rolls and compartment sizes is confusing as to what the phrase refers to.

The term the central part may not have positive antecedent basis but the term is believed clear and not indefinite. However, to advance prosecution, Claim 2 is amended to clarify the phrases referred to by the Examiner.

As amended, Claim 2 is submitted as obviating the Examiner's rejection under 35 USC Section 112, second paragraph.

In Claim 3, the Examiner contends that the phrase "the central base" appears to lack antecedent basis.

Claim 3 is amended herein to clarify the claim and the noted term recited therein.

As amended, Claim 3 is submitted as obviating the Examiner's rejection under 35 USC Section 112, second paragraph.

In Claim 4, the Examiner contends that a term "the floor" has no antecedent basis and/or includes a phrase that is confusing as to what is being referred to.

Claim 4 appears to require alternate support arrangements. Claim 4 is amended to clarify certain required elements relating to size and mass of the support stand used to support the dispenser box on the ground. The term "ground" is found in independent base Claim 1. The aspect of the "floor" is clarified and certain language deleted from Claim 4 and presented in newly added Claim 7.

As amended, Claim 4 is submitted as obviating the Examiner's rejection under 35 USC Section 112, second paragraph.

In Claim 6, the Examiner contends that a phrase therein is confusing as to what is being referred to.

Claim 6 is amended herein to clarify the terms of the phrase referred to by the Examiner.

As amended, Claim 6 is submitted as obviating the Examiner's rejection under 35 USC Section 112, second paragraph.

Claim Rejections - 35 USC 103

Office Action, Paragraph 10:

Claims 1 and 3 – 6 are rejected under 35 USC 103 as being unpatentable over Kannenkeril et al. (US-5,573,168) in view of Simahee (US-6,230,953) and Woodman (US-942,231).

Applicant's Attorney traverses the Examiner's multipart rejection as being an impermissible hindsight reconstruction of the prior art solely to reject the Claims of the application.

Claim 1 is amended to clarify various aspects of the device, including the dispenser box and support stand, the relation of the dispenser box to the support stand, a support ramp in the inner compartment of the dispenser box, and a hook member on the front wall of the dispenser box. As amended, Claim 1 clarifies the arrangement between the ramp, hook, support stand, base of the dispenser box, and a bag discharge opening, front wall, and hook. Claim 1 requires that the dispenser box include a base member, and ramp and that the dispenser box be secured to the support stand by the base member. Further, Claim 1 requires that the bag pass through a discharge opening formed between edge portions formed by the base member and the front wall,

and that the discharge opening extend across the bottom edge of the dispenser box. Additionally, Claim 1 requires that the hook member project from one edge portion, and slope rearwardly from the front wall towards the rear wall.

Kannenkeril et al. shows a bag dispensing apparatus 10 including a boxlike container 12 formed by a pair of opposed lateral sidewalls 14, opposed rear and front panels 16 and 20 and an upstanding wall 40 between the front and rear walls 20 and 16, a bottom wall or ramp 18, and a hook 44 on the front panel 20, the upstanding wall 40 and rear panel 16 forming a compartment for storing a roll of bags, and the upstanding wall 40 including a guide plate 35 with guide slot 34 for passing bags from the compartment, through the guide slot 34, and to the hook 44 on the front panel.

Kannenkeril et al. does not show or suggest the invention required by Claim 1.

First, in Kannenkeril et al., the ramp 18 forms the bottom of the dispenser box, and a slot 34 for receiving and guiding the bag is formed in a specific guide plate that ends horizontally between the upstanding front panel 20 and an intermediate wall 40. The bag discharge opening is not formed between juxtaposed edges of the the front wall and the base of the box. Indeed, the base (18) and the front panel (20) form a continuous right angle bend, and teach against the opening being along the bottom front edge of the dispenser. The ramp (18) forms the base of the box.

These arrangements in Kannenkeril et al. are contrary to Claim 1, which requires a base member (connectible to a support stand) and having a first edge, a ramp, and a front wall having a second edge portion, the edge portions being in juxtaposed spaced-apart relation with one another and forming a discharge opening that extends across the bottom edge of the box for dispensing bags. In Kannenkeril et al., the bag discharge opening is not associated with the base

member, and does not extend across the bottom edge of the dispenser. Kannenkeril et al. teaches away, and requires a special guide member and bag guide arrangement spaced upwardly and away from the bottom of the dispenser and upwardly from the bottom front edge. Indeed, the right angled bend between the ramp (18) and front panel (20) provides no suggestion that the opening be therealong.

Second, in Kannenkeril et al., a bag receiving compartment is formed between the intermediate wall 40 and the rear panel 16. The front panel 20, which includes the hook 44, is spaced from the discharge opening for the bag, and does not cooperate with the rear panel 16 to form the bag receiving compartment of the container. This is contrary to Claim 1, which requires that the bag receiving compartment be formed between the rear wall and the front wall, including the respective edge portions, discharge opening, and hook associated with the edge portions. that form a wall that cooperates to form the discharge opening.

Third, in Kannenkeril et al., the roll of bags is supported on the plate 18 and the roll will roll downwardly against the upstanding wall 40, and the hook 44 is on the front panel (20), which is spaced forwardly and away from the panel (40). This is contrary to Claim 1, which requires that the hook be on one of two juxtaposed edge portions (of the dispenser base plate or front wall) and slope from the front wall to the rear wall.

Kannenkeril et al. does not show or suggest that the dispenser box be affixed atop a support stand, or that a base plate of the dispenser box - separate from a sloped ramp for supporting the roll, be connected atop a support stand. This is contrary to the requirements of Claim 1.

The Examiner concedes that Kannenkeril et al. lacks the requisite vertical support piece, but contends that Simhaee discloses that the use of vertical supports is old, and thus "it would

have been obvious to one skilled in the art at the time the invention was made to use the device of Kannenkeril et al with a vertical tubular piece and base in order to support and locate the dispenser when needed.”

There is no suggestion in Kannenkeril et al that a base member of a bag dispenser container be provided, let alone that the dispenser be affixed atop such support pole of Simahaee.

Assuming arguendo as the Examiner that the use of a support stand is old, and the combination is in fact suggested by the references, the combination of Kannenkeril et al with Simahaee would result in the upper end of a support pole being in some manner affixed to the sloped ramp (18). This modification is contrary to and does not satisfy the requirements of Claim 1.

Applicant’s Attorney submits that the combination is not suggested by Kannenkeril et al without the use of a hindsight reconstruction. That is, the Examiner is using Claim 1 as a roadmap to find references showing isolated features and then combining only so much of a reference thus found as is needed to reject the claim.

The alternative rejection based on a combination of Kannenkeril et al with Woodward is traversed as hindsight for the same reason given regarding Simahaee.

Applicant’s Attorney submits that Claim 1 is patentable over the prior art relied upon by the Examiner.

As to Claim 4, the Examiner contends that “the modified device of Kannenkeril et al discloses the invention substantially as claimed including fixing the base to the floor (that is the base is sat on the floor) or the base is heavier than a single bag.”

Applicant’s Attorney traverses the Examiner’s rejection.

Claim 4 depends from Claim 1 and is submitted as being patentable for the same reason that Claim 1 is patentable.

Applicant's Attorney submits that Kannenkeril et al., as shown or as "modified" by the Examiner, is not substantially as claimed and that the use of a support stand is neither shown or suggested by Kannenkeril et al. The Examiner's "modification" is a hindsight reconstruction. Indeed, "substantially as claimed" is not the same as "as claimed"

Applicant's Attorney submits that Claim 4 is patentable over the prior art relied upon by the Examiner.

As to Claim 5, the Examiner contends that the modified device of Kannenkeril et al. disclose the use of a lid (22) that is openable and closable.

Applicant's Attorney traverses the Examiner's rejection.

Claim 5 depends from Claim 1 and is submitted as being patentable for the same reason that Claim 1 is patentable.

In Kannenkeril et al. an L-shaped top panel (22) includes an end piece (23) at 90° thereto to create additional drag or overspin as the diameter of the roll decreases in size as due to a reduction in the number of bags remaining on the roll. The L-shaped beam preferably is heavy enough to maintain contact with the roll, to progressively inhibit rolling resistance of the roll of bags as the bags are depleted.. The piece (22) is not a lid that closes about the top of the dispenser box.

Applicant's Attorney submits that Claim 5 is patentable over the prior art relied upon by the Examiner.

As to Claim 6, the Examiner contends that the modified device of Kannenkeril et al disclose the invention substantially as claimed but does not show a support stand but the “leaning” aspect is disclosed in Simahaee.

Applicant’s Attorney traverses the Examiner’s rejection.

Claim 6 depends from Claim 1 and is submitted as being patentable for the same reason that Claim 1 is patentable.

Contrary to the Examiner’s contentions, device of Kannenkeril et al does not disclose the invention as claimed. As noted above, if modified in a manner suggested by the Examiner, the reference may even “substantially” disclose the invention as claimed – but not disclose the invention in a manner required by 35 USC 103.

Claim 6 as amended defines the relationship of the bag dispensing box relative to the support stand. The support stand is neither shown nor suggested by Kannenkeril et al and thus the provision is hindsight and the specific orientation of a bag dispensing box is speculative. The combination of references is believed hindsight, contrary to 35 USC 103.

Applicant’s Attorney submits that Claim 6 is patentable over the prior art relied upon by the Examiner.

Office Action, Paragraph 11:

Claim 2 is rejected under 35 USC 103 as being unpatentable over Kannenkeril et al. in view of Simahee and Woodman, as applied to Claim 1 above, and further in view of Wilfong (US-5,207,368).

Applicant’s Attorney traverses the Examiner’s multi-reference rejection as being a clear hindsight reconstruction, by picking and choosing various elements from each of several

references, using Applicant's claim as a roadmap. Any suggestion for the Examiner's reconstruction is not found in the references, but solely from a use of impermissible hindsight.

Claim 2 depends from Claim 1 and is submitted as being patentable for the same reason that Claim 1 is patentable.

Examiner's Conclusion

Paragraph 12:

The Examiner notes that other prior art, made of record and not relied upon herein, is considered pertinent to Applicant's disclosure.

Applicant's Attorney believes that the Claims herein, as amended, are patentable over the prior art of record herein.

New Additional Issues

Claim 7, dependent on Claim 1, is newly added by this Reply. The limitations of Claim 7 were previously substantially presented in Claim 4 and deleted therefrom by this Reply.

Claim 4 is submitted as being patentable for the same reason that Claim 1 is patentable.

Conclusion

The Substitute Specification (and associated Abstract) submitted hereiwth are believed to obviate the Examiner's objections relating to the format of the application, as filed, and without presenting any new matter.

A certified copy of Applicant's claim for priority based on an application filed in Mexico will follow.

The Claims are amended herein in a manner believed to to remove all objections.

Certain rejections under 35 USC Section 112, first and second paragraphs and/or Section 103, are believed obviated, either by the amendment herein of the specific claim or in view of arguments presented regarding the prior art and the claim requirements.

Claims 1 - 7, all claims pending in this application, are submitted as being definite, patentable, and in condition for allowance.

A Notice of Allowance is requested.

If the Examiner believes that a telephone conference would advance the prosecution of this application, he is encouraged to contact counsel for Applicant at the number listed below.

Respectfully submitted,

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